cases of *Harris* v. *Warre, supra,* and *Tournier, supra.*

In the present case in my view the words which were proved to have been spoken by the defendants were substantially the same as the words alleged in the Statement of Claim and I am confirmed in that view by the opinions of my brethren who are much more familiar with the Malay language than I am. Moreover there has been no question of injustice because the defence had nothing to do with the precise words used; it was a complete denial of using any words.

In the circumstances I would dismiss the appeal with costs.

Syed Sheh Barakbah J.: I entirely agree with the judgment which the learned President has just delivered and have nothing to add.

Azmi J.: I concur with the conclusions reached by the President of the Court that this appeal should be dismissed with costs and have nothing to add.

Appeal dismissed.

Solicitors: *M. N. Cumarasami; Braddell & Ramani.*

PUBLIC PROSECUTOR v. TEH KHIAN LONG

[A. Cr. J. (Thomson C.J.) October 14, 1960]

[K. L. — Selangor Criminal Appeal No. 56 of 1960]

Road Traffic — Notice of intended prosecution — Offence set out in charge differs from that in notice — Road Traffic Ordinance, 1958, s.56.

The provision of section 56 of the Road Traffic Ordinance that a notice of intended prosecution should be served on the accused is mandatory but the provision with regard to the specification of the time of the alleged offence is only directory. The purpose of the notice was to call the accused's attention to the fact that he was to be prosecuted while the circumstances were still fresh in his mind. If the purpose was fulfilled an incorrect statement as to the time of the accident did not invalidate the notice.

Case referred to:—

(1) *Pope* v. *Clarke* [1953] 2 All E.R. 704; [1953] 1 W.L.R. 1060; 37 Cr. App. R. 141.

CRIMINAL APPEAL.

Syed Othman bin Ali (Deputy Public Prosecutor) for the appellant.

Khoo Eng Chin for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was prosecuted in the Magistrate's Court at Kuala Lumpur for driving a motor-cycle without due care and attention in contravention of section 36(1) of the Road Traffic Ordinance.

The charge alleged that the offence in question was committed on 9th November, 1959, at about 5.50 p.m. in Jalan Raja, Kuala Lumpur.

On 21st November, 1959, a notice under section 56 of the Road Traffic Ordinance had been addressed to the respondent to the effect that he had been involved in an accident at 6 p.m. on 8th November in Jalan Raja, Kuala Lumpur, and that consideration was being given to the facts with a view to prosecuting him for dangerous driving or driving without due care and attention.

It is admitted that that notice was sent to him by registered post within the statutory period of 14 days.

On the summons being called, counsel for the respondent took the preliminary point that the charge was bad because the offence set out in the charge was not the same as the offence set out in the notice served under section 56. In the case of the charge it was alleged that the offence took place at 5.50 p.m. on 9th November whereas the notice was in respect of an offence committed at about 6 p.m. on 8th November. The Magistrate accepted this submission and dismissed the summons.

In my opinion the Magistrate was wrong but I hasten to add that the responsibility for his error rests upon the prosecution who failed to bring to his notice the case of *Pope* v. *Clarke*(1). Had that case been brought to his notice it is very unlikely he would have dismissed the summons.

In that case, which deals with the provisions of section 21(c) of the United Kingdom Road Traffic Act, 1930, which correspond to those of section 56 of our Road Traffic Ordinance, it was held by a very strong Divisional Court including Lord Goddard and the present Chief Justice, Lord Parker that the provision of section 21(c) of the Road Traffic Act that a notice of intended prosecution should be served on the defendant is mandatory but the provision with regard to the specification of the time of the alleged offence is only directory. The purpose of the notice was to call the respondent's attention to the fact that he was to be prosecuted while the circumstances were still fresh in his mind. If that purpose was fulfilled an incorrect statement as to the time of the accident did not invalidate the notice.

What was said in that case was, to my mind, clearly applicable here. It is true that here there was a discrepancy both as to the date and as to the time. The discrepancy as to the date, however, was of one day only and in the absence of any knowledge whatsoever of the circumstances of the case the Magistrate was not in a position to form any opinion as to whether the defendant could have been prejudiced in any way. If it had transpired at the end of the trial that the defendant had been involved in two accidents on two successive evenings in Jalan Raja, then the discrepancy between the charge and the notice would have called for very very careful examination with a view to ascertaining whether the defendant could have been in any way prejudiced. But until that position arose the discrepancy was so small that the Magistrate to my mind should have brushed the point aside on the ground that the mandatory part of the section had been complied with.

The appeal is allowed and the order of discharge set aside.

Appeal allowed.